

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMERSON ELECTRIC, CO.	:	CIVIL ACTION
	:	
v.	:	NO. 06-1562
	:	
RODNEY P. BUFFINGTON	:	

**MEMORANDUM AND ORDER**

**Juan R. Sánchez, J.**

**September 19, 2006**

Emerson Electric Co. asks this Court to enjoin Rodney P. Buffington from disclosing or using any business information taken from Emerson, to force Buffington to return any materials copied or taken from Emerson and to enjoin his employment at Bronkhurst USA. Applying the standards for a preliminary injunction, I will grant the first two requests but deny the third with conditions.

**FACTS**

The facts are undisputed.<sup>1</sup> Brooks Instrument, a division of Emerson Electric, makes gauges and controls used in the pharmaceutical, energy, chemical, medical and computer industries, among others. Rodney Buffington worked for Brooks Instrument for 36 years, most recently as director of sales for a coriolis flow meter called Quantim. Buffington retired from that job. Before Quantim,

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<sup>1</sup>Buffington filed an “Answer and Affirmative Defenses” which does not deny any of the allegations in the Complaint. An answer failing to deny the allegations of the complaint admits them. Fed. R. Civ. P. Rule 8(d); *Biggs v. Public Service Coordinated Transport*, 280 F.2d 311, 314 (3d Cir. 1960); *U. S. for Use of Automatic Sprinkler Corp. of America v. Merritt-Chapman & Scott Corp.*, 305 F.2d 121, 123 (3d Cir. 1962). When a defendant fails to deny the allegations, the Court may conclude there is no factual dispute in the case. *Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local 295 v. Knouse Foods Co-op., Inc.*, 259 F. Supp. 592, 592 (D.C. Pa. 1966).

Buffington was Brooks Instrument's director of worldwide semiconductor sales.

Buffington signed a confidentiality agreement with Emerson, and received the employee handbook which defined proprietary information. Buffington was a part of the highest levels of management. Buffington participated in time-line and pricing decisions for Brooks Instrument. At one conference he learned how Brooks Instrument would defend against a challenge from Bronkhorst High-Tech, B.V., a Dutch competitor.

Buffington retired from Brooks Instrument in October, 2005, telling the company and his fellow employees he had received an inheritance and he and his wife were building a retirement home in Florida, where he planned to move to play more golf. At Buffington's request, Brooks Instrument gave him an enhanced retirement package worth an extra \$2,500 a year.

In March, 2006, Buffington showed up at an industry trade show representing Bronkhorst as its Vice President and General Manager. Brooks Instrument investigated and found:

- Before his retirement, Buffington took two vacation days in June 2005 and made a cell phone call on an Emerson cellular telephone in the Netherlands to another number in the Netherlands.
- On October 12, 2005, Buffington used his laptop computer to access confidential company files.
- In the two weeks before his official retirement, Buffington went to the office only two weekdays but also went on Sunday, October 30, 2005, and used his lap top to access confidential information. He also installed an external memory stick in his lap top before retiring. He returned the lap top but not the memory stick.

At the preliminary injunction hearing, Buffington testified he is a 59 years old and had become increasingly uneasy about his job security when he received an unfavorable performance review and found documents detailing the costs associated with Brooks's aging workforce. Layoffs of other employees in May 2005 prompted Buffington to ask a competitor, Bronkhorst in the

Netherlands, about employment. Bronkhorst was founded by a former employee of Brooks Instrument, who told Buffington to sever his ties with Brooks before committing to Bronkhorst. In his last weeks at Brooks Instrument, Buffington downloaded and copied a collection of Brooks files. Buffington only gave one of the files to Bronkhurst, a CD-ROM with pricing information from 2005. Buffington testified he does not know why he took the files and expressed remorse for taking the information. Brooks asks this Court to enjoin Buffington from using any information taken from Brooks and from working for Bronkhorst USA.<sup>2</sup>

## DISCUSSION

Injunctive relief is an extraordinary remedy that should be granted only in limited circumstances. *Frank's GMC Truck Ctr., Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988). In determining whether a preliminary injunction should be issued, a court must consider (1) whether the movant has a reasonable probability of success on the merits; (2) whether irreparable harm would result if the relief sought is not granted; (3) whether the relief would result in greater harm to the non-moving party, and (4) whether the relief is in the public interest. *Swartzwelder v. McNeill*, 297 F.3d 228, 234 (3d Cir. 2002).

To determine whether Emerson has a reasonable probability of success on the merits, I must examine the enforceability of Buffington's confidentiality agreement. Pennsylvania<sup>2</sup> courts will permit the equitable enforcement of post-employment restraints only where the restrictions are reasonably limited in duration and geographic extent. *Sidco Paper Co. v. Aaron*, 351 A.2d 250, 252 (Pa. 1976) (holding a two-year restriction on selling in a territory reasonable). Courts must enforce

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<sup>2</sup>Pennsylvania law applies in this *Erie*-bound diversity case. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938)

restrictive covenants equitably and “only so far as reasonably necessary for the protection of the employer.” *Hess v. Gebhard & Co.*, 808 A.2d 912, 923 (Pa. 2002). Consideration of the employer’s interest must be balanced against the need to avoid imposing an undue hardship on the employee. *Bettinger v. Carl Berke Assoc., Inc.*, 314 A.2d 296, 298 (Pa. 1974). Any restrictive covenant which imposes a restraint on an employee’s right to earn a livelihood should be construed narrowly. *Allegheny Anesthesiology Associates, Inc. v. Allegheny General Hosp.*, 826 A.2d 886, 892 (Pa. Super. 2003) (affirming a preliminary injunction allowing nurse anesthetists to work at the hospital of their choosing).

Emerson Electric cites *Air Products and Chemicals, Inc. v. Johnson*, 442 A.2d 1114, 1115-16 (Pa. Super. 1982), as suggesting this Court has more latitude in restricting Buffington’s employment after he disclosed Emerson’s information than it might have if the harm were only speculative. In *Johnson*, the court enjoined the employee from working at a particular site for one year and from disclosing any confidential information, but did not prevent the employee from working at all. *Id.* Proof of past use or disclosure may be relevant, but “it is not a *sine qua non* for injunctive relief.” *Den-Tal-Ez, Inc. v. Siemens Capital Corp.*, 566 A.2d 1214, 1232 (Pa. Super. 1989).

Restrictions on disclosing trade secrets do not include a worker’s “aptitude, his skill, his dexterity, his manual and mental ability, and such other subjective knowledge as he obtains while in the course of his employment . . . .” *Pittsburgh Cut Wire Co. v. Sufrin*, 38 A.2d 33, 34 (Pa. 1944); *see also Christopher M’s Hand Poured Fudge v. Hennon*, 699 A.2d 1272, 1275 (Pa. Super. 1997) (enjoining an employee who stole dozens of business documents from continuing to compete with his former employer).

When I apply the factors required for a preliminary injunction, I find Emerson has a

reasonable probability of success on the merits, but not a certainty; there is little likelihood of irreparable harm because the harm, if any, is long since past; the relief sought would result in greater harm to Buffinton, the non-moving party, and the relief is not in the public interest because it imposes too great a restriction on Buffington's ability to work. I will allow Buffington to continue to work for Bronkhorst USA with the caveat that he shall not use any information about Emerson, learned from the documents he took from Emerson or otherwise, in the course of his employment with Bronkhorst. The destruction or return of all Brooks information is moot as both sides agree it has happened. To the extent that it has not, it now should.

An appropriate order follows.

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RODNEY P. BUFFINGTON	:	

**ORDER**

AND NOW, this day 19<sup>th</sup> day of September, 2006 Plaintiff's Motion for a Preliminary Injunction (Document 26) is GRANTED in part and DENIED in part. Defendant shall not, directly or indirectly, use, employ, and/or disclose any of Plaintiff's confidential and proprietary information, work product, and trade secrets to any person or entity, particularly not to Bronkhorst USA. Defendant shall return to Plaintiff any of its confidential documents and/or records in his possession, custody or control.

It is further ORDERED a conference pursuant to Federal Rule of Civil Procedure 16 will be held in the Reading Station of the Eastern District of Pennsylvania, 400 Washington St., Reading PA at 11:30 a.m. on Tuesday, October 3, 2006. Counsel are referred to Judge Sánchez's standard operating procedures at <http://www.paed.uscourts.gov/documents/procedures/sanpol.pdf>

BY THE COURT:

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\\s\\ Juan R. Sánchez  
Juan R. Sánchez, J.